Neutral Citation Number: [2019] EWHC 1100 (Admin)

Case No: CO/321/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT
IN THE MATTER OF THE DEATH OF ELSIE FROST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/05/2019

Before:

LORD JUSTICE IRWIN
MR JUSTICE JAY

- -

Between:

COLIN FROST	**Claimant**
- and –	
HER MAJESTY'S CORONER FOR WEST YORKSHIRE (EASTERN DISTRICT)	**Defendant**

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Anna Morris (instructed by **Minton Morrill Solicitors**) for the **Claimant**
The Defendant was not represented

Hearing date: 16th April 2019

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Approved Judgment

LORD JUSTICE IRWIN and MR JUSTICE JAY:

Introduction

1. On 9th October 1965 Elsie Frost, who was 14 years old, was found murdered at the ABC steps in Wakefield, West Yorkshire. She had suffered multiple stab wounds. Ian Bernard Spencer was originally suspected as being the killer. On 11th January 1966 the Jury at a Coroner's Inquest found in terms that Ian Bernard Spencer murdered Elsie. He was then committed for trial under s.25 of the Coroner's (Amendment) Act 1926, but in March 1966 the Crown offered no evidence against him at a preliminary hearing conducted by Ashworth J.

2. In 2015 West Yorkshire Police opened a new inquiry into Elsie's murder. Their subsequent investigations are said to have implicated another man, Peter Pickering, and in the summer of 2017 the file was sent to the CPS for a charging decision. On 25th March 2018 Peter Pickering died suddenly before a decision could be made.

3. For many years Elsie's family have lived with the uncertainty and trauma of this unresolved murder. The witness statements of Colin Frost, Elsie's younger brother, and of Anne Cleave, her elder sister, set out the impact in clear and moving detail. We have also read a witness statement filed by Ian Bernard Spencer's son, Ian Lee Spencer, which explains from an obviously very different perspective the frustration and heartache caused by the finger of suspicion continuing to be pointed in his father's direction. Ian Bernard Spencer died on 31st January 2018.

4. Colin Frost now applies to this Court under s.13 of the Coroners Act 1988, with the *fiat* of HM Attorney General, for an order quashing the Coroner's Inquisition dated 11th January 1966 and directing that a new Inquest take place.

5. Ms Anna Morris appears for Colin Frost instructed by Ms Gemma Vine of Minton Morrill Solicitors. We understand that this claim has been crowdfunded and record that it could not have been advanced as effectively and economically as it has been without the contribution of Colin Frost's legal team.

6. The Senior Coroner for West Yorkshire (East) has filed an Acknowledgement of Service stating that he does not intend to contest this claim. In his brief witness statement dated 14th February 2019 he questions the value of a fresh Inquest both in terms of the public interest and the interests of the families.

The Facts

7. We derive the essential facts of this case from the Statement of Facts and Grounds dated 21st January 2019 and Colin Frost's Memorial submitted to HM Attorney General on 9th October 2018.

8. The original Inquest into Elsie's murder began on 4th January 1966 before HM Majesty's Deputy Wakefield and District Coroner, Mr Phillip Gill sitting with a Jury.

9. The Inquest heard evidence from Philip Bastow who saw Mr Spencer by the lagoon close to the crime scene on the day of Elsie's murder. After it had occurred, Mr

Spencer was seen again near the crime scene. There was also evidence that Mr Spencer was in possession of knives.

10. On 7th January Mr Spencer gave evidence. He stated that he had passed the scene but at the time of the killing he had been at home with his wife and another person. He said that he was informed of Elsie's death by his mother-in-law. In answer to questioning from the Coroner, Mr Spencer told the jury that he had not left his home after returning from the lagoon at 15:40 and that he had spoken to Mr Shillitoe and two youths. On 8th January the Coroner asked further probing questions of Mr Spencer inviting his comment on other witness evidence which appeared to locate him on a towpath and/or in the vicinity of train tracks shortly after 16:00. Mr Spencer said that he did not know Elsie Frost.

11. On 11th January the Jury gave their verdict. The Inquisition recorded that the cause of the death of Elsie Frost was "shock and haemorrhage due to multiple stab wounds", and that she had been murdered by Mr Spencer.

12. On 14th February 1966 the Wakefield Justices found that there was no case to answer. Mr Spencer was then remanded on the Coroner's warrant to face a charge of murder at Leeds Assizes. As we have already said, at a preliminary hearing conducted before the trial was due to start the Crown offered no evidence and Ashworth J directed that a not guilty verdict be entered. The Record of Inquisition remained as it was.

13. In June 2013 Colin Frost contacted the West Yorkshire Police Major Investigation Review Team with a view to their conducting further investigations into Elsie's death. Media interest in this case intensified over the next two years, and in July 2015 West Yorkshire Police informed the family that a fresh inquiry, given the moniker "Operation Plainlake" (this was also the name of the original 1965 investigation), would begin. By then, the family had also discovered the existence of five separate files relevant to the original investigation and the judicial process. The existence of this inquiry entered the public domain in October 2015.

14. By 2016 Operation Plainlake was treating Mr Pickering as a person of interest. He was serving a life sentence for the manslaughter by reason of diminished responsibility of the 14-year-old Shirley Boldy in 1972.

15. It is the understanding of Colin Frost that in 2016 as part of Operation Plainlake:

    (1) The scene of Elsie's death was re-examined.

    (2) A pathologist was instructed to review the original post-mortem report.

    (3) Over 900 statements were read and entered onto the HOLMES database.

    (4) A number of new witnesses, including one police officer, provided statements.

    (5) Officers investigated the contents of a "lock-up" facility associated with Mr Pickering: this was found to contain a large quantity of his notebooks, correspondence and personal effects.

16. In August 2016 Colin Frost also became aware that on 13th October 1965 the Metropolitan Police had sent a telegram to Wakefield City Police regarding Mr

Pickering, whom they regarded as a potential suspect. Colin Frost understands that the Metropolitan Police offered to provide files relating to Mr Pickering to the Wakefield investigation. However, on 25th October 1965 Wakefield City Police did not accept this offer and ruled out Mr Pickering as a suspect.

17. On 27th September 2016 Mr Pickering was arrested in connection with Elsie's murder and was interviewed under caution. On 6th March 2017 he was re-arrested and re-interviewed.

18. Between March and June 2017 Colin Frost was told of further evidence which in the view of the West Yorkshire Police implicated Mr Pickering. Colin Frost was told that there had been up to 5,000 "disclosures" as part of the West Yorkshire Police investigation. The family believes that there may be other evidence which has not been shared with them.

19. Colin Frost understands that on or about 12th June 2017 a file was submitted by the West Yorkshire Police to the CPS for a charging decision to be made in relation to Mr Pickering for the murder of Elsie Frost.

20. On 20th March 2018 Mr Pickering was convicted of the rape and false imprisonment of an 18-year-old woman in 1972. This offence took place weeks before the killing of Shirley Boldy.

21. On 25th March 2018 Mr Pickering died of a heart attack. By that point no charging decision had been made by the CPS.

22. Thereafter, West Yorkshire Police made at least two public statements to the effect that they strongly believed that Mr Pickering had killed Elsie Frost.

23. On 25th April 2018 Colin Frost wrote to HM Senior Coroner for West Yorkshire (Eastern District) asking him to re-open the Inquest into Elsie's death. On 4th May he informed Colin Frost that he was *functus officio* and that this could not happen.

24. On 23rd July 2018 the Police and Crime Commissioner for West Yorkshire, Mark Burns-Williamson OBE, wrote to Colin Frost's MP confirming his support for the upcoming application for a *fiat*. Reference was made to "significant new evidence" which had been "uncovered".

25. On 9th October 2018 Colin Frost applied to HM Attorney General for his *fiat* pursuant to s.13 of the Coroners Act 1988. This was granted on 20th December.

The Legal Framework

26. Section 13 of the Coroners Act 1988 as amended provides:

> "13 **Order to hold investigation**"
>
> (1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a Coroner ("the Coroner concerned") either—

> (a) that he refuses or neglects to hold an Inquest or an investigation which ought to be held; or
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> (b) where an Inquest or an investigation has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may by, another investigation) should be held.
>
> (2) The High Court may—
>
> (a) order an investigation under Part 1 of the Coroners and Justice Act 2009 to be held into the death either—
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> (i) by the Coroner concerned; or
>
> (ii) by a senior Coroner, area Coroner or assistant Coroner in the same Coroner area;
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> (b) order the Coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and
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> (c) where an Inquest has been held, quash any inquisition on, or determination or finding made at that Inquest."

27. Subsection (1)(b) is germane to the instant case, in particular the sub-category, "the discovery of new facts or evidence". Locating a case within that sub-category is just the starting-point; the next stage is to consider the issue of necessity or desirability, the test being disjunctive. Further, it is clear from subsection (2) that this court is not obliged or required either to quash the original Inquisition and/or to order a new Inquest even if one or more of the statutory preconditions in subsection (1) are considered to be satisfied. This is a discretionary exercise, and one relevant consideration must be the lapse of time since 1965 and the death of Messrs Pickering and Spencer. However, in this regard the overall interests of justice must be the paramount consideration.

28. We were shown relevant case law, and the governing principles in a case such as this are clear.

29. It is the function of an Inquest to seek out and record as many of the facts concerning the death as the public interest requires: see *R v South London Coroner, ex parte Thompson* [1982] 126 SJ 625 and *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1.

30. The general principles governing applications under s.13 of the Coroners Act 1988 have been expounded by Lord Judge CJ in *HM Attorney General v HM Coroner for South Yorkshire (West)* [2012] EWHC 3783 (Admin), at para 10:

> "We shall focus on the statutory language, as interpreted in the authorities, to identify the principle appropriate to this application. The single question is whether the interests of

> justice make a further Inquest either necessary or desirable. The interests of justice, as they arise in the coronial process, are undefined, but, dealing with it broadly, it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first Inquest, will normally make it both desirable and necessary in the interests of justice for a fresh Inquest to be ordered. The decision is not based on problems with process, unless the process adopted at the original Inquest has caused justice to be diverted or for the inquiry to be insufficient. What is more, it is not a pre-condition to an order for a further Inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh Inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed. Without minimising the importance of a proper Inquest into every death, where a national disaster of the magnitude of the catastrophe which occurred at Hillsborough on 15 April 1989 has occurred, quite apart from the pressing entitlement of the families of the victims of the disaster to the public revelation of the facts, there is a distinct and separate imperative that the community as a whole should be satisfied that, even if belatedly, the truth should emerge."

In that case, there was a gap of 23 years between the relevant event – the death of 96 people at Hillsborough – and the date of the hearing in the Divisional Court.

31. In *HM Senior Coroner for the Eastern Area of Greater London v Whitworth and Kovari* [2017] EWHC 3201 (Admin), this Court held, at para 23, that where the new facts or evidence made it clear that the evidence heard by a Coroner was insufficient to provide the full picture which is now available of the circumstances of the death, this can render the investigation insufficient through no fault of the Coroner; and that both the public interest and the interest of the bereaved families required that the evidence be heard. It was also pointed out in that case by Holroyde LJ that it was not incumbent on a s.13 applicant to show that the conclusions reached at a fresh Inquest were likely to be different.

The Claimant's Submissions on this Application

32. Ms Morris advanced a series of submissions in support of her overarching contention that both the quashing of the original Inquisition and the ordering of a fresh Inquest are necessary and desirable in the interests of justice. Ms Morris made it clear that reliance is placed on both limbs of s.13(1)(b), although the notion of desirability is less onerous.

33. First, it is contended that the existence of fresh evidence obtained by West Yorkshire Police into the circumstances of Elsie's death means that it is necessary or desirable in the interests of justice that the public record should accurately reflect what is known about the facts of her death.

34. Secondly, it is said that the quashing of the Inquisition which continues to name Mr Spencer as being responsible for Elsie's murder is necessary or desirable in the interests of justice in circumstances where not merely is there evidence that he was not the killer but someone else was.

35. Thirdly, but adjunctive to the third submission, it is argued that one of the key functions of an Inquest is to allay rumour or suspicion. The evidence of Mr Ian Lee Spencer is clearly material in this regard.

36. Fourthly, and regardless of the identification of the killer, it is strongly submitted that there is an important public interest in investigating the facts of this troubling case in circumstances where the inference may be drawn that recent police inquiries have been wide-ranging, comprehensive and thorough; and have significantly altered the essential factual structure of this case. Both families have an obvious interest in bringing closure to these events.

The Coroner's Concerns

37. The Coroner has drawn the following matters to our attention.

38. First, it is said that s.10(2) of the Coroners and Justice Act 2009 would expressly prohibit a fresh Inquest from concluding that Mr Spencer did not commit the murder or that Mr Pickering did. It follows that the most that could be achieved at a fresh Inquest would be to re-affirm that Elsie Frost had been unlawfully killed.

39. Secondly, concern is expressed as to who would represent the interests of Mr Pickering at any fresh Inquest. In this regard issues arise as to his mental capacity.

40. Thirdly, it is observed in any case that Mr Spencer was acquitted of Elsie's murder. The reference to him in the 1966 Inquisition could be deleted.

Discussion and Conclusions

41. We accept Ms Morris' submissions. Applying the guidance given by Lord Judge CJ in the *HM Coroner for South Yorkshire (West)* case, it seems to us that fresh evidence is now available which may reasonably lead to the conclusion that the substantial truth about how Elsie met her death was not revealed at the first Inquest. We are able to draw that inference from the nature and scope of the investigation conducted by West Yorkshire Police, and the fact that the case papers were sent to the CPS for a charging decision. Colin Frost does not have to satisfy us that the conclusions at a fresh Inquest are likely to be different: the statutory requirement is to demonstrate the existence of "new facts or evidence" which render a fresh Inquest necessary or desirable in the interests of justice. Plainly, this court must conduct some sensible evaluation of the likely nature and range of that evidence in the light of the statutory test, and we should make it clear that the police file is not available to us. However, we have been

able to undertake that sensible evaluation on the basis of what we know the view of West Yorkshire Police to be in the light of the actions they have taken.

42. An issue arises of whether the passage of 53 years should be regarded as rendering any further investigation into this tragic case unnecessary. We have considered this point carefully and have concluded that the public interest has not been significantly vitiated by this lapse of time. The witness statements of Colin Frost, Anne Cleave and Ian Lee Spencer demonstrate beyond any doubt that the resolution of this case, to the extent that it may ever be resolved, remains extremely important for the families. In this context we can do no better that to quote from paras 13 and 14 of the witness statement of Anne Cleave:

> "13. Almost every day, for the last 53 years, I have thought about Elsie. As I grew older, I wondered what she would have been like as she grew older and what she would have done with her life. I will always wonder how she would have fulfilled the promise she showed. Elsie was extremely bright, and I wonder if she would have had a wonderful career. I will never have the answers to these questions, but I still continue to ask them.
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> 14. Further to these questions, I also want to know how and why she died, and I have always hoped that one day I would have an answer to what, for many years seemed to be an impossible question. As a family, we hope that a new Investigation and Inquest will go some way to supplying these answers and revealing the evidence that West Yorkshire Police gathered which we are told evidenced the guilt of Peter Pickering, to the extent that West Yorkshire Police were confident in sending the file to the CPS."

43. Under the Coroners (Amendment) Act 1926, there was no prohibition on juries in murder cases stating that the killer was a named individual. Indeed, there was power under rule 26 of the Coroners Rules 1953 to specify the person or persons to be charged with murder or manslaughter. As Sir Thomas Bingham MR (as he then was) explained in *Jamieson*, there was a series of rule changes after 1966 which served to restrict the ability of Coroners and Juries to pronounce on matters of criminal liability, and we note that by s.56 of the Criminal Law Act 1977 it was enacted that "the purpose of the [Inquest] proceedings shall not include the finding of any person guilty of the murder, manslaughter or infanticide". Under s.10(2) of the Coroners and Justice Act 2009, a determination by a Coroner or a Jury "may not be framed in such a way as to appear to determine any question of criminal liability on the part of a named person". In *Coroner for the Birmingham Inquests (1974) v Hambleton* [2018] EWCA Civ 2018, the Court of Appeal, at paras 46-57, reaffirmed the principle that, whereas an Inquest must explore the circumstances of the death and the contextual background, its findings or conclusions cannot be expressed in terms which name the perpetrator.

44. In *Jamieson* Sir Thomas Bingham MR gave the following general guidance which in our view remains germane to the 2009 Act:

> "It may be accepted that in case of conflict the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in rule 42. But the scope for conflict is small. Rule 42 applies, and applies only, to the verdict. Plainly the Coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability.
>
> There can be no objection to a verdict which incorporates a brief, neutral factual statement … But such verdict must be factual, expressing no judgment of opinion, and it is not the jury's function to prepare detailed factual statements." (at 24E-G)

45. This was in the context of the Coroner's general duty "to ensure that all the relevant facts are fully, fairly and fearlessly investigated" (at 26B/C). The approach in *Jamieson* was expressly affirmed by the Court of Appeal in *Hambleton*.

46. Subject to these Court of Appeal authorities, exactly how the Coroner would wish to conduct a further Inquest must be a matter for him or her. The further Inquest will be receiving a considerable body of new evidence, which has already been obtained, bearing on the circumstances of and surrounding Elsie's death, and it is important that this evidence is heard, if appropriate tested and then evaluated in the public interest and the interests of the families. This exploration will cover facts – here, new facts – which bear on criminal liability and correct the former record, even if a formal pronouncement akin to that given in 1966 cannot now be made. We were told that the claimant and his family understand the limitations imposed by s.10(2), but the point pressed on us by Ms Morris, which we accept, is that the *process* of public examination of the available evidence will achieve a sufficient resolution for them after so many years.

47. The death of Messrs Spencer and Pickering does not render this process futile, unnecessary or undesirable. Had the latter survived, any Inquest would have had to await the conclusion of any criminal proceedings. These, had they taken place, may well have been sufficient to obviate the need for a further Inquest ordered pursuant to s.13 of the Coroners Act 1998. But in the circumstances which have obtained the need for such an Inquest remains established. As Ms Morris has pointed out, Mr Pickering's estate could apply to participate in the Inquest as an interested person under s.47 of the Coroners and Justice Act 2009.

48. We have been content to determine this application under the first limb of the sub-section, *viz*. necessity. In any event, we should state for completeness that we have no doubt that the second limb, viz. desirability, has clearly been fulfilled.

49. For the reasons we have already given, we are not satisfied that it would be sufficient in the present case simply to order the deletion of the name of Mr Spencer from the record of Inquisition dated 11th January 1966. We have been persuaded by Ms Morris' submissions that this Inquisition should be quashed and that a fresh Inquest should be ordered.

Disposal

50. We order the relief sought by Colin Frost in the draft Order prepared by Ms Morris.